HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 111 of 2006 (M/S)

Smt Sayid
Vs
A.D.J. Haridwar

Approved for reporting.

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Not approved for reporting

Date of decision 3/5/06

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 111 (MS) OF 2006

1. Smt. Sayid wife of late Sri Mohd. Asgar,
2. Salim, S/o late Mohd. Asgar,
3. Kumari Gulraj, D/o late Sri Mohd. Asgar,

All resident of Mohalla Peeth Bazar Jwalapur, District Haridwar. .....Petitioners.

Versus

1. Additional District Judge, / IV Fast Track Court, Haridwar.
2. Prescribed Authority/Civil. Judge (Senior Division), Haridwar.
3. Shiv Prasad Sharma, S/o late Sri Ram Prasad Sharma, R/o Shiv Lok Chowk Bazar, Jwalapur, Tehsil and District Haridwar. .....Respondents.

Mr. N.S. Negi, Advocate for the petitioner.
Mr. Rajendra Dobhal, Advocate for the respondent no.3.

Dated: 03.05.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order-dated 03.02.2006 (Annexure No. 5 to the writ petition) passed by the respondent no. 1 in Rent Control Appeal No. 39 of 2001 under Section 21(1)(a) under the Act No. 13 of 1972.

FACTUAL MATRIX OF THE CASE

Briefly stated, the respondent no. 3 filed an application under Section 21 (1) (a & b) of U.P. Act No. 13 of 1972 in

respect of Shop situate at Shiv Lok Chowk, Jwalapur, District Haridwar. According to the case of the landlord, respondent no. 3, the shop in dispute is an old construction of 70 year's old and is in a dilapidated condition and he desires to rebuild the same after demolition of the building for which the plans have already been prepared. Further the respondent no. 3 has alleged in his application that one son of the landlord has passed B.A. Examination in the year, 1990 in 3rd division and the other son has already passed intermediate examination but both the sons are completely unemployed and they want to open a show-room of cloth and as such the requirement of shop for his two sons is bonafide. He has also alleged that the comparative hardship also lies in his favour inasmuch as there will be no harm to the tenant whereas by refusing to release the premises, both the sons will remain unemployed.

The prescribed Authority has rejected the application on both the grounds i.e. Section 21 (1) (a) & (b) of U.P. Act No. 13 of 1972. An appeal was preferred by the landlord under Section 22 of the U.P. Act No. 13 of 1972. The appellate Court has considered the entire evidence on the record and has allowed the application under Section 21 (1) (a) of the U.P. Act No. 13 of 1972 and has refused under Section 21 (1) (b) of the Act.

BONAFIDE REQUIREMENT OF THE LANDLORD

During the proceedings of the application filed under Section 21 (1) (a) of the U.P. Act No. 13 of 1972, respondent no. 3 has filed his own affidavit 32-Ga, affidavit of Pradeep Sharma 33-Ga, report and map submitted by Engineer Naveen Goyal 35-Ga and 36-Ga and 37-Ga showing that the building is in a dilapidated condition.

So far as the affidavit of the respondent no.3/landlord is concerned, it has been stated that he requires the premises in order to settle his two sons. The Appellate Court, therefore,

has come to the conclusion that the shop is required to settle both the sons of the landlord. It has been found by the appellate Court that no other shop is available with the respondent no. 3 and whatever the shop has been suggested by the petitioner belongs to the deity Shiv Ji Maharaj and therefore, the same is not available with the landlord.

So far as other two shops are concerned, which have been released in Case No. 14 of 1997, a finding has been recorded that the possession has not been given to the landlord and the other portion has been found to be one Baithak and Drawing Room not a shop.

The appellate Court has also considered the fact that the landlord requires the premises for setting his two sons, who are completely unemployed and as such the need has been found to be bonafide. In ***Mst. Bega Begum V/s Abdul Ahamd Khan 1979 A.I.R. SC page 272,*** it has been held:-

> *"The connotation of the term of the term 'requirement should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get an order of release. Such a course defeat the very purpose of the Act, which affords the facility of eviction of the tenant to the landlord on certain specified grounds contemplated under section 21 of the Act. The provisions contained in the Act strike a just balance between the genuine need of the landlord on the one hand and the great inconvenience and troubles of the tenants on the other. Since section 21 of the Act is meant for the benefit of the landlord, therefore, it must be so construed as to advance the object behind the said provision. The tenant has to establish that if he is evicted he will suffer greater hardship as compared to the landlord and must lead clear evidence to show that in spite of the best efforts he*

was unable to get another alternative suitable accommodation in the absence whereof the scale of relative hardship may be titled in favour of the landlord as the inconvenience, loss or trouble resulting from a denial of the order of release in favour of the landlord will for out weight the prejudice or the inconvenience which may likely be caused to the tenants."

In the case of ***Ragavendra Kumar v. Firm Prem Machinery & Co. (2000) 1Supreme Court Cases 67,*** it has been held:-

"It is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. [See-Prativa Devi (Smt.) v. T.V. Krishnan] In the case in hand the plaintiff landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.

Following the decision of ***Bega Begum (supra)***, in the case of ***Joginder Pal vs. Naval Kishor Behal, 2002 Sc & FB, Rent Cases, 388***, the apex Court has held as under:-

5. In Malpe Vishwanath Acharya and Ors. V. State of Maharashtra and Anr. (1998) 2 SCC 1) this Court emphasized the need of social legislations like the Rent Control Act striking a balance between rival interests so as to be just to law. "The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society". While the shortage of accommodation makes it necessary to protect the tenants to save them from exploitation but at the same time the need to protect tenant is coupled with an obligation to ensure that the tenants are not conferred

with a benefit disproportionately larger than the one needed. Socially progressive legislation must have a holistic perception and not a shortsighted parochial approach. Power to legislate socially progressive legislation is coupled with a responsibility to avoid arbitrariness and unreasonability. A legislation impregnated with tendency to give undue preference to one section, at the cost of constraints by placing shackles on the other section, not only intails miscarriage of justice but may also in constitutional invalidity.

8. The need for reasonable interpretation of rent control legislations was emphasized by this Court in Bega Begum v. Abdul Ahad Khan 1979 A.I.R. Sc page 272. Speaking in the context of reasonable requirement of landlord as a ground for eviction, the Court guarded against any artificial extension entailing stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. The Court warned that such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. In Kewal Singh v. Lajwanti this Court has observed, while the rent control legislation has given a number of facilities to the tenants, it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance, one of the grounds for eviction which is contained in almost all the Rent Control Acts in the country is question of landlord's bona fide personal necessity. The concept of bona fide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical. Recently in Shiv

Sarup Gupta v. Dr Mahesh Chand Gupta8 the Court has held that the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

9. The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords – both. The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble.

30. In providing key to the meaning of any word or expression the context in which it is set has significance. Colour and content emanating from context may permit sense being preferred to mere meaning depending on what is sought to be achieved and what is sought to be prevented by the legislative scheme surrounding the

expression. Requirement of landlord for his own use, is an expression capable for attributing an intention to the legislature that what was intended to be fulfilled is such requirement as would persuade the landlord to have the premises vacated by the tenant, to forego the rental income, and to put the premises to such use as the landlord would deem to be his own use and in the given facts and circumstances of a case the Court too would hold it to be so in contradistinction with a mere ruse to evict the tenant. The legislature intending to protect the tenant also intends to lift the protection when it is the requirement of landlord to put the accommodation to suc use as he intends, away from leasing it out.

31. If we do not meaningly construe the concept of requirement the provision may suffer from the risk of being branded as unreasonable, arbitrary or as placing uncalled for and unreasonable restrictions on the right of the owner to hold and use his property. We cannot place a construction on the expression 'for his own use' in such a way as to deny the landlord a right to evict his tenant when he needs the accommodation for his own son to settle himself well in his life. We have to give colour and content to the expression and provide the skin of a living thought to the skeleton of the words, which the Legislature has not itself chosen to define. The Indian society, its customs and requirements and the context where the provision is set in the legislation are the guides leading to acceptance of the meaning which we have chosen to assign to the words 'for his own use' in Section 13(3)(a)(ii) of the Act.

32. (*v*) *In the present case, the requirement of landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord 'for his own use' within the meaning of Section 13(3)(a)(ii).*"

COMPARATIVE HARDSHIP

So far as the comparative hardship is concerned, the finding has been recorded that the landlord requires the premised for his two sons as they are wholly unemployed and they have no business to settle themselves.

Rule 16 of the Act No. XIII of 1972 has been interpreted in the case of ***Munni Lal Gupta Vs. 7th Additional District and Sessions Judge, Aligarh reported in 1997 (1) A.R.C. 301.*** After relying upon the judgment of ***Rajendra Kumar Gupta Vs.Gopal Krishan and other, A.I.R. 1995 Allahabad 82,*** it has been held that suitable alternative accommodation, which may become available on an effort being made in that direction is also a factor to be considered and want or earnest efforts in looking for suitable alternative accommodation, disentitles protection given to the tenant while considering the comparative hardship of the parties. The observations in the decision of Munni Lal Gupta (supra) are quoted below:-

> *"A suitable alternative accommodation which may become available on an effort being made in that directing is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Kishan and Others, AIR 1995 Alld. 82: 1994 ARC 11, it has been held by Sudir Narain, J. and I concur with the view taken therein that "one of the principles for considering comparative hardship of the parties is to find out as to whether the tenant had made a sincere*

efforts to find out alternative accommodation and had placed materials before the authorities to come to their conclusions that he made such an effort". The fact that earlier application for release, met the fact of rejection some 10 years ago, could not be projected backward to operate as an obstacle in the way of the release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitable, landlord Sanjai Gupta did is M.A. after rejection of the earlier applications and his failure to secure employment for himself, lends congency to his moving the present application."

In the case of ***Prem Prakash Gupta and others Vs. Second Additional District Judge, Allahabad and others – Allahabad Rent Cases 1993 (1) page 77,*** it has been held that no doubt true that the tenant will have to be ousted form a house, if a decree of eviction has been passed, yet such an event by itself will not be a valid ground for refusing a decree for eviction. The observation in the case of ***Prem Prakash Gupta*** (supra) is quoted as below:

"As observed by this Court in its decision in the case of ***Rajeshwari Prasad Vs. Fateh Bahadur Chaturvedi and others reported in 1984 (1) A.R.C. 387,*** *the bona fide need is the foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word"……..*

In the case of ***Shushila v. IInd Additional District Judge, Banda and others reported in 2003 (1) A.I.R. Page 256,*** *it has been held as under:-*

"A bare perusal of rule 16 of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Rules, 1972, makes it clear that the rule only prescribes certain factors which have also to be taken into account while considering the application

for eviction of a tenant on the ground of bonafide need. Sub-rule (2) of Rule 16 quoted earlier relates to the cases of eviction from an accommodation for business use. Clause (1) of sub-rule (2) provides greater the period of tenancy less the justification for allowing the application; where as according to Clause 9b) in case tenant has a suitable accommodation available to him to shift his business. Greater the justification to allow the application. Availability of another suitable accommodation to the tenant, waters down the weight attached to the longer period of tenancy as a factor to be considered as provided under clause (a) of sub-rule (2) of Rule 16. Yet another factor which may in some cases be relevant under clause (c) is where the existing business of the landlord is quite huge and extensive leaving aside the proposed business to be set up, there would be lesser justification to allow the application. The idea behind sub-clause (c) is apparent i.e. where the landlord runs a huge business eviction may not be resorted to for expansion or diversification of the business by uprooting a tenant having a small business for a very period of time. In such a situation if eviction is ordered it is definitely bound to cause greater hardship to the tenant.

Further there being no material on record to indicate that the petitioners have made any effort to search out the accommodation during the pendency of the case. This factor also goes against the petitioners.

In the case of ***Bhagwan Das v. Smt. Jiley Kaur andothers reported in 1991 (1) A.R.C. Page 377,*** the Apex Court has held as under:-

"Thirdly, it was a case where was even this additional circumstances that the appellant had brought no material on record to indicate that at any time during the pendency of this long drawn out litigation he made any attempt to seek an alternative accommodation and was unable to get. In Mst. Bega Begum v. Abdul Ahad Khan, (1979) 1 SCC 273; 1986 SCFBRC 346 (SC), it was held that in deciding the extent of

the hardship that may be caused to one party or the other, in case a decree for eviction is passed or is refused, each party has to prove its relative advantages or disadvantages and the entire onus cannot thrown on the plaintiffs to prove that lesser disadvantages will be suffered by the defendants and that they were remediable."

On the above two findings, the appellate Court has come to the conclusion that the need is bonafide and comparative hardship also lies in his favour, I do not find any illegality so as to interfere under article 226/227 of the Constitution of India.

In view of the aforesaid inaction on the part of the petitioner, the findings recorded by the appellate Court cannot be said to be illegal. The landlord has every right to settle his two sons. I do not find any illegality in the order passed by the appellate Court releasing the shop in favour of the landlord/respondent no. 3.

FINDINGS OF FACT

In ***Surya Dev Rai Vs. Ram Chander SCC 2003 Vol-6 675,*** the Apex Court has held as under:-

"Supervisory jurisdiction under article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction."

"Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirement are satisfied: (i) The error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard

of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby."

" A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent."

" The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or correction is yet capable of being corrected at the conclusion of the proceedings if an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and or early disposal of the suit of proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that every moment, may become incapable of correction at a letter stage and refused to intervene would result in stravesty of justice or where such refusal itself would result in prolonging of the lis."

" The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character."

Relying upon the Judgment of ***Surya Dev Rai Vs. Ram Chandra 2003 (6) SCC 675,*** the Apex Court in ***Ranjeet Singh Vs. Ravi Prakash 2004 (3) SCC 682,*** has held as under:-

" As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution of India also, it has been held in ***Surya Dev Rai*** *that the jurisdiction was not available to be exercised for indulging in reappreciation or evaluation of evidence or correcting the errors in drawing inferences like a court of appeal."*

Petitioner has prayed for some time to vacate the premises. However, the petitioner is directed to vacate the premises by 31st December, 2007 on the undertaking to be given before the Prescribed Authority by 15th July, 2006after receipt of the certified copy of the order and further pays the entire arrears of rent by the said date and continues to pay regularly every month for use and occupation.

Writ petition is dismissed. No order as to costs.

03.05.2006 (Rajesh Tandon, J.)
Rathour